

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY J. ABUAN,

Plaintiff,

v.

CITY OF FIFE, et al.,

Defendants.

CASE NO. C12-5069 BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
REMAND

This matter comes before the Court on Defendant Washington State Department of Licensing and its unnamed officers and agents' ("DOL") motion to remand (Dkt. 14). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On December 29, 2011, Plaintiff Anthony Abuan ("Abuan") filed a complaint in the Pierce County Superior Court for the State of Washington against the City of Fife, the DOL, and various unnamed officers and agents of those entities. Dkt. 1 at 7–14. On January 26, 2012, the City of Fife removed the matter to this Court. *Id.* Abuan properly served the DOL on February 6, 2012. Dkt. 14 at 3.

On August 8, 2012, the DOL filed a motion to remand. Dkt. 14. On September 9, 2012, Abuan responded. Dkt. 16. The DOL did not reply.

II. DISCUSSION

The DOL moves for remand based on the state's Eleventh Amendment immunity to suits in federal court. Abuan counters that the DOL's appearance, answer, and minor participation in the suit shows that the DOL has waived its immunity and has submitted to the jurisdiction of this Court. Dkt. 16 at 4–5. Abuan fails to cite any authority for the Court to conclude that such limited participation is a waiver of immunity. In fact, contrary to Abuan's position, the test for waiver of such immunity is stringent and requires an “unequivocal indication” that [the state] consents to suit in federal court.” *Micomonaco v. State of Wash.*, 45 F.3d 316, 321 (9th Cir. 1995) (quoting *Charley's Taxi Radio Dispatch Corp. v. SIDA of Hawaii, Inc.*, 810 F.2d 869, 873 (9th Cir. 1987)). The Court finds that the DOL has not waived its immunity. Therefore, the Court grants the DOL's motion to remand.

III. ORDER

Therefore, it is hereby **ORDERED** that DOL's motion to remand (Dkt. 14) is **GRANTED** and Abuan's claims against the DOL shall be **REMANDED**.

Dated this 20th day of September, 2012.



BENJAMIN H. SETTLE
United States District Judge